

## NEPA and Other Reclamation Activities

### 4.1 Integrating NEPA with Other Reclamation Activities

Reclamation operates under and carries out a number of other processes and activities. Integrating NEPA into these may require special considerations. It is important to remember that the intent of NEPA is to assure consideration of the environment in all processes and activities.

### 4.2 The Planning Process

When appropriate, an EIS and planning reports should be prepared as integrated documents. The review and processing procedure accommodates the NEPA-related procedural requirements as well as the agency decisionmaking process.

Reclamation has prepared a draft *Decision Process Guidebook* (1996, available from D-5100), which provides an overview of the steps and considerations in planning for and implementing a decision in any context. As such, it discusses NEPA in general terms and integrates environmental considerations throughout the suggested process. The guidebook also contains suggestions and a graphic depiction of when NEPA procedural steps are appropriate. The suggested process starts with an action plan, which is constantly updated and which contains such basic information as a definition of the objective (the need, in NEPA terms), the way in which the office is going to proceed, and who should be involved. NEPA considerations, such as the scope and the need for multidisciplinary teams, are reasonable factors to consider at this stage.

### 4.3 The Principles and Guidelines

The latest procedures for implementing the Water Resources Planning Act of 1965 were developed in 1983 as the *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* (P&G).

The P&G's evaluation criteria must be used in studies justifying authorization or reauthorization of federally funded water and related land resources implementation projects. The P&G's evaluations are not required for many common resource management decisions such as:

- Water service repayment contracts
- Resource management plans
- Annual operation plans
- Transfer of facilities
- Mitigation activities
- Changes in operation of existing projects
- Basinwide or ecosystem management studies

In essence, if construction funding is not being requested from Congress, the P&G are not required. Although not required, the P&G's evaluation is often used because of its acceptance and consistent application throughout the Federal water resources community.

The P&G are followed for implementation studies, (e.g., dam construction) which are conducted for projects authorized by Congress. Applying the P&G ensures proper and consistent planning by Federal agencies in formulating and evaluating water resources studies. The P&G and NEPA have a common goal—to “examine all reasonable alternatives during project planning to provide the greatest public benefit and the least adverse environmental effect.” Reclamation integrates the P&G and NEPA to plan and evaluate projects in an organized and environmentally responsible manner. In this way, the purpose and policies of NEPA become a part of the planning process and carry as much weight as economic or engineering factors that were traditionally priority considerations.

## 4.4 Special Investigations and Reports

Special investigations and reports may include water management studies and fish and wildlife investigations that result in recommendations for construction or changes in management. Special investigations should include sufficient study of environmental aspects to make viable recommendations for either further study or for implementation of plans of action. If the special report only recommends further study, it would come under a departmental CE, and no CEC is necessary. When a plan of action is recommended by the special report that would result in a Federal action, an EA should be prepared, leading to either an EIS or a FONSI. The level of environmental detail should be commensurate with the level of detail

for other study aspects. When appropriate, the NEPA compliance document should accompany a special report through all decisionmaking levels.

#### 4.4.1 Status Reports

Status reports may be prepared at any time during a planning investigation. As the name implies, a status report should set forth the status of the investigation and summarize the data collected and analyses made. Such a summary should include a discussion of the environmental data and the analyses to the extent that they have been completed. Since a status report would not include a recommendation for construction, it comes under a Departmental CE, and no NEPA compliance documentation is required.

#### 4.4.2 Concluded Studies

A study may be concluded at any time during a planning investigation. Concluded studies should be referenced and released to the public to document the reasons for the conclusion. The environmental data that have been collected should be summarized, along with summaries of other data and analyses that have been made. Since a concluding report contains no recommendations other than to conclude the study and to state that no further actions will be taken, it comes under a Departmental CE, and no CEC or other NEPA compliance is necessary.

### 4.5 Resource Management Plans

It is Reclamation policy (*Reclamation Manual*) to develop a resource management plan (RMP) for each significant Reclamation area that will serve as a basis for future resource decisions. These RMPs should include applicable sections on recreation, fish and wildlife, operations, cultural resources, ITAs, agriculture, and other special uses. The purpose of these RMPs is to incorporate in one document all information pertinent to future management of the area. This includes the analysis of the resources of the area, the identification of land use suitability and capability, the determination and designation of land use zones, and the development of management policies, objectives, responsibilities, guidelines, and plans. In addition, copies of agreements, laws, EOs, rules and regulations, special reports, special plans,

maps, and all other pertinent documents must be included. The refinement and complexity of the material to be included in the plan and its length are governed by the size, complexity, and importance of the area for which the plan is prepared.

Since a properly prepared RMP should contain much of the information and analyses required by NEPA, the RMP and NEPA material should be developed concurrently. Much of the initial public involvement and resource inventory information can be used in the NEPA document. Either an EA or an EIS should be prepared, dependent upon the significance of the potential impacts. The draft EA/EIS evaluates all alternatives, including the preferred alternative, and is submitted for public review prior to completion of the RMP. The final RMP and final EA/EIS may either be issued together upon completion of the review process, or the final RMP may be issued later. If there is controversy associated with the preferred alternative, it is best to wait to issue the final RMP for at least 30 days following the EA/FONSI or until after a ROD is issued.

On projects that were subject to previous NEPA compliance, no additional compliance may be required for the approval of a new RMP unless there are substantial departures from the original development and management proposals or new data significantly affecting the environment. Where minor changes are proposed after completion of the RMP, normally only those changes are subject to additional NEPA compliance. Often, the original NEPA document is programmatic and indicates that followup NEPA compliance will be carried out for site-specific projects.

## 4.6 Construction Activities

Construction activities for Reclamation projects and programs are ordinarily described in project or programmatic EISs. From time to time during construction, it is necessary to modify construction features after filing an FEIS. Such structural modifications may result in a different set of environmental impacts. Reclamation shall evaluate the environmental consequences of such structural or location changes. Based on the amount of change and its relationship to the environmental consequences, the appropriate NEPA compliance document shall be completed.

Other construction activities are carried out for regional programs or specific projects and may not have prior NEPA documentation. These could include repair of existing facilities or additions to authorized projects. While some of these activities may be considered as categorically excluded (40 CFR 1508.4), many minor construction activities may not qualify for CEs because the impacts are unknown or

may be significant. The CEC should be used to determine if the proposed action qualifies as a CE and to decide if additional NEPA documentation is needed.

## 4.7 Safety of Dams

The modification of existing dams for safety purposes can cause environmental impacts. The impacts can vary from the usual O&M impacts, which are usually categorically excluded, to impacts associated with repairing, modifying, replacing, or breaching dams. The potential significance of the environmental impacts caused by repairing, modifying, replacing, or breaching would determine if a CEC, EA, or EIS would be required. If the action does not fit the CE category, an EA shall be prepared to determine the significance of the impacts of the proposed action unless it is apparent that an EIS is required.

The decision on the type of NEPA compliance document required, and the preparation of the NEPA document to accompany the safety of dams proposals, is the responsibility of the regions. When a safety issue is first identified, solutions should be developed with the use of environmental information as well as economic and engineering information. Because this is a safety issue, the need for NEPA documentation can be modified by a possible emergency situation (40 CFR 1506.11; see also section 3.11 of this handbook). If it is not an emergency, however, development of solutions should fully integrate environmental concerns into the decisionmaking process regardless of the level of NEPA documentation required. ESA and CWA (Section 404) compliance, for example, must be fully considered.

The procedures for funding dam safety activities may appear to force the preparation of a NEPA document before the final details are known. The location or alignment of borrow sites or haul roads, for example, may not be known when funding requests need to go forward. This situation should be avoided; but when it cannot, it is best to include a wide range of components for all the reasonable alternatives. The final selection is then more likely to have been addressed without the need to supplement the NEPA document. Supplementation may be required, however, and this should be considered in scheduling.

## 4.8 Soil and Moisture Conservation Program

The soil and moisture conservation program activities may qualify as categorically excluded from further NEPA requirements under several

of Reclamation's CEs (516 DM, Appendix 9). However, such activities will be evaluated by the CEC to ensure that the proposed activity will qualify for the CE; if not, an EA may be prepared, and either a FONSI or EIS will be completed. Alternatively, Reclamation may determine that an EIS is appropriate without an EA or a CEC. If mitigation is an integral part of the proposal, the use of an EA should be seriously considered even if a CE potentially applies.

## 4.9 Routine O&M Activities

O&M activities which have been routinely carried out over long periods of time and do not constitute a change in O&M activities generally do not need a CEC or any type of NEPA compliance documentation.

However, if these activities are new (e.g., clearing of brush or trees that have previously been allowed to grow on a dike or along a canal right-of-way), are changes to past practices, are not routine, or (because of a change in the environment) are previously routine activities that may now have environmental effects, they should be evaluated by the use of the CEC to determine if they qualify for a CE. If not, an EA shall be prepared and either a FONSI or EIS completed before the action is undertaken. Alternatively, Reclamation may determine that the probability for significant impacts is large enough that an EIS is appropriate without preparation of an EA. Possible NEPA compliance needs should be reviewed annually during the preparation of annual operating plans.

On many Reclamation projects, O&M is carried out by contract with a private entity (usually an irrigation district). In these situations, it is important to recognize that NEPA may still apply to any nonroutine O&M activities that the contractor may carry out upon Reclamation lands or facilities. This is a difficult area, and an examination of the O&M agreement and an exact understanding of the action being considered may be necessary to determine the extent of Federal involvement and the need for NEPA compliance documents. The appropriate Solicitor's Office should be included in this determination. Generally, if Reclamation must approve the O&M action, and it is not a routine historic action, NEPA applies.

## 4.10 Land Exchanges, Acquisitions, Withdrawals, and Disposal

On projects where NEPA compliance has been completed, and where that project involves exchanges, acquisitions, withdrawals, and/or

disposal, no further compliance is needed when the exchange, acquisition, withdrawal, and/or disposal occurs, unless there are significant changes in the action or there is significant new information concerning environmental issues. Significant changes or significant new information may trigger the need to supplement the original NEPA compliance documents.

On projects where there is no existing NEPA compliance, the activity will need to be evaluated to determine appropriate NEPA documentation. A CE would generally be appropriate only if there is no change in land use and the action is solely administrative. If the action is not administrative only, and/or there is a change in land use, then an EA or EIS will likely be needed. It is important to note that Secretarial Order 3127 requires that, prior to transfer or acceptance of lands, easements, or other interests in lands, the site must be cleared of hazardous waste.

## 4.11 Pesticide Program

The Department of the Interior requires Reclamation facilities to develop pest management/resource protection (PM/RP) plans for the control of pests (weeds, rodents, insects, or others), including invasive species (EO 13112). These PM/RP plans are to include integrated pest management processes for the control of pest species. The use of integrated pest management practices is mandated by Federal law and by the Department of the Interior. Plans are to be developed and reviewed on a 3- to 5-year basis.

The pest management program is part of Reclamation's ongoing O&M function, which generally has no major environmental impacts. Numerous general O&M activities are listed in the CE category found in Appendix 9 of 516 DM 6, item 9.4D (Reclamation's CEs). No specific exclusion is available for pest management (Integrated Pest Management) activities, but one of the general CE categories covering O&M activities can be used, where appropriate.

The cooperative research group in the Technical Service Center (TSC), composed of research personnel from Reclamation, performs ongoing applied research to develop Reclamation project uses for PM/RP plans. They are also involved in research activities to develop other pest control methods, including biological, mechanical.

A specific CE for such research activities is found in Appendix 9 of 516 DM 6, item 9.4A 3. A CEC will be used to determine if proposed research activities qualify to be categorically excluded.

Pest management activities on Reclamation lands occasionally require actions that could potentially have significant environmental consequences or may be particularly controversial from a scientific standpoint (e.g., aerial spraying). In these situations, it could be necessary to prepare an EA to determine whether a FONSI could be issued or an EIS would be required.

## 4.12 Negotiations and Water Service Contracts

NEPA compliance and negotiation situations, such as water contracting and repayment as well as others, present a unique set of issues to be considered. The interplay between the discussion and decisions of the negotiators and the NEPA alternative development and disclosure processes can be complex.

The draft basis of negotiation (BON) generally includes a summary of potential environmental issues. This summary should be based upon a preliminary internal draft NEPA document, which would be available to the Commissioner's Office (or any other approving office) upon request. This allows Reclamation to be aware of, and to use the information developed by, the NEPA process to assist in arriving at Reclamation's best possible solution. However, there is some risk involved in this. If the negotiators should develop a solution that is not within the range of alternatives examined, a supplemental NEPA document may be needed. The best way to avoid this is effective scoping of the issues and potential solutions.

Generally, preparing NEPA documentation after negotiations are essentially completed is less effective in meeting the policy and procedural requirements of NEPA. To be effective, NEPA documentation and related environmental information should be developed before a final decision is framed. If, as is often suggested, NEPA documentation waits until the negotiators have finished their process, the value of the information to the effective decisionmakers (i.e., the negotiators) is reduced. Additionally, there is a risk that the NEPA process will uncover some impacts that require the renegotiation of the agreement.

A common Reclamation activity that requires negotiations is the renewal of existing water service contracts, which has its own well-established process. The integration of NEPA and the contract renewal process can serve as an example of the complexity of applying NEPA to negotiation situations in general.

The renewal of water service contracts involves several steps. Reclamation develops a BON, which defines a preferred agency position for the negotiations and the range of flexibility that the negotiators have on various issues. This is an internal document and



is not prepared for public distribution. It is based upon legal authorities and internal policy and decisions and should include information developed from factfinding meetings and discussions with contractors, interested agencies, and the public, as well as the results of a needs analysis for the district(s) involved.

Reclamation generally enters negotiations with water users with a draft contract that incorporates the agency's preferred provisions for the renewed contract. Public negotiations continue until a mutually agreeable contract is developed by the negotiators. If the provisions in the negotiated contract are within the range of flexibility defined in the BON, the contract is announced as a draft contract that is available for public review for at least 60 days prior to contract execution. If the negotiated contract contains provisions beyond the range defined in the BON, further approval by the Commissioner's Office is needed. Following the completion of the public review of the negotiated contract and consideration of the comments received, the contract is signed by the water users and Reclamation.

This summary of the contracting process highlights some of the steps and issues that may arise in integrating NEPA.

Reclamation makes a number of preliminary decisions in the BON as part of its internal process in preparation for negotiations. Although these decisions are neither final nor irreversible until a contract is signed, care should be taken that these preliminary decisions do not act to constrain the open, early, and public consideration of the full range of alternatives expected by the NEPA process. Consideration of options identified by scoping and internal interdisciplinary input should encourage the incorporation of the policy of NEPA in the development of the BON.

Scoping of issues and potential alternatives should occur during the development of the BON to provide Reclamation with a broad public review of the issues associated with the existing contract and to provide options for consideration in the development of the BON. Additionally, public involvement can help define the appropriate level of NEPA documentation for the renewal effort. It is expected that an EA is appropriate in many situations, but EISs and CEs may be more appropriate in some situations. This determination should be made as early in the process as possible to allow a reasonable amount of time for the level of documentation that is appropriate.

Once the agency's preferred alternative is defined by an approved BON and appropriate alternatives addressing contractor and public issues have been analyzed, a draft NEPA compliance document can be released. The preparation of this document should be initiated as soon as the appropriate level of documentation needed is defined. If

this is an EA or an EIS, it is helpful to have the draft available at, or shortly after, the start of negotiations. This allows Reclamation, the water users, and the public to understand the environmental consequences (or lack of them) for the issues being negotiated. This should, in turn, encourage the negotiation of provisions that avoid significant environmental impacts, fulfilling the intent of NEPA.

The final NEPA documentation should be coordinated with the required public review of the negotiated contract to allow public disclosure of the environmental consequences (or lack of them) for the provisions in the negotiated contract and to provide Reclamation management with the environmental information required by NEPA before a final decision is made.

### 4.13 Title Transfer

Transfer of title (TOT) involves transferring title in Reclamation facilities to another entity. The *Framework for the Transfer of Title*, August 1995, initiated Reclamation's TOT process and addresses policy and criteria for transferring uncomplicated projects (i.e., those without outstanding environmental issues). This document should be referenced during evaluation of any TOT proposal.

Existing CEs may address a few localized TOT situations, but for other transfers, Reclamation shall prepare an EA or an EIS. Reclamation's policy is that the transferee should be expected to pay the costs associated with the NEPA review.

Issues and obligations that may come up as part of title transfer include: endangered and threatened species concerns; cultural resources issues; hazardous materials concerns; treaties and compacts (international/Indian and interstate); ITAs; Wild and Scenic Rivers issues; and compliance with a variety of EOs (e.g., wetlands, flood plains, pollution prevention, environmental justice, and others).

As in any other environmental review, staff will have to review the proposal and determine if these issues exist and, if so, how title transfer may affect these concerns.

The title transfer process does have a public involvement component. One means of identifying potential environmental problems and controversial issues is to notify stakeholders and interested parties and get them involved early in discussions on title transfer. Among agencies, the Service has conveyed its interest in being involved early on in title transfer discussions.

If mitigation of potential environmental impacts becomes necessary, or if there are prior environmental commitments associated with a project, it is Reclamation's view that these should be put in place before title is transferred, except in limited circumstances. Conditions should be attached to title transfers to ensure that measures are implemented and maintained.

## 4.14 Changing Water Use

Changes in the water use are handled in different ways in different Reclamation regions. Changes in use may include changes in the location of use, changes in user, changes in type of use, and changes in allocation of, or contractual entitlement to, water. The basic guidance is that, regardless of the type of change of water use, State water law must be followed, and NEPA compliance is required.

Changing the use of Reclamation project water from agricultural uses to municipal and industrial uses and changes within the agricultural community are becoming more frequent. Also, negotiated Indian water rights settlements may provide project water to Indian communities in excess of their current demands. Some Indian communities may propose to change the use of project water to urban uses through various mechanisms that will require Federal approval. Changing water use may be accomplished by leases, assignments of contract entitlement, new water contracts, subcontracts, water service agreements, or other, more creative arrangements. Regardless of the particular form, Reclamation approval of the change will be required in most cases, triggering review under, and compliance with, NEPA. This approval may be limited in cases involving Indian water rights settlements, depending upon the terms of the settlement.

In general, it is Reclamation policy to encourage and facilitate the most efficient beneficial use of project water and, thus, to encourage changes that implement these policies, consistent with our water management mission. Proposals for changes in water use reflect ongoing trends of greater efficiencies in agricultural water use, retirement of agricultural lands, and continuing demographic trends toward increased urbanization, particularly in the Western United States. Moreover, since the agricultural water supply has already been developed, some of the significant environmental impacts of developing new water supplies for urban use may be avoided by changing water use from the agricultural sector.

Before approving such changes, a NEPA review is required to identify the likely environmental consequences of such proposals, and this information must be considered in Reclamation decisionmaking. In assessing the environmental impacts of changes in water use, numerous issues arise, including:

- What is the relationship of water supply and urban population growth?
- Is the change growth inducing, or are we simply accommodating unavoidable demographic trends by providing a relatively impact-free source of water?
- How far, and to what degree, do we follow the impacts that are associated with the newly approved water use?

In some restricted cases, the proposed change will fit one of the exclusion categories, and the CEC may be used to determine if the proposed change qualifies for the exclusion. Examples include:

- Changes in contract entitlement where the **only result** will be to implement an administrative or financial practice or change (516 DM 6 Appendix 9.4.D.14). An example would be an acquisition of one water company by another, where the project water contract is transferred to the new company, which then provides project water to the same service area.
- Reclamation approval of second party water sales agreements for small amounts of water (usually less than 10 acre-feet) (516 DM 6 Appendix 9.4.D.15).
- Changes in contractual entitlement allowing short-term water use which will not lead to long-term changes and where the impacts are expected to be localized (516 DM 6 Appendix 9.4.D.4).
- Changes in contractual entitlement allowing long-term use of “minor” amounts of water which will not lead to long-term changes and where the impacts are expected to be localized (516 DM 6 Appendix 9.4.D.4).

In those situations where a CE does not apply, an EA or EIS will be required.

During its NEPA compliance actions, Reclamation should endeavor to avoid encroaching on State and local governments' primary jurisdiction over local planning, zoning, and other such issues associated with the concept of “growth.” Such respect for State and local primacy must occur along with Reclamation's compliance with Federal laws, including NEPA. It should be recognized that there will be occasions when the provision of Federal project water may be the cause of urban growth, and, in such instances, the Reclamation NEPA document will need to examine these issues.

One way to determine if the change in water use will cause growth is to prepare an EA to assist Reclamation in determining whether the urban growth is a consequence of the project water supply, or whether the growth would occur anyway, even in the absence of the project water. If comparable quantities of alternative water supplies are reasonably available (as supported by appropriate documentation), then the “future without” scenario is probably very similar to the proposed action with respect to population growth issues. This can be documented in the “no action” (“future without”) alternative, eliminating the need for a detailed discussion of issues and impacts which are not a consequence of the Federal action at issue.

In situations in which it is clear that growth is a result of the provision of project water (“but for” the provision of project water, this growth would not occur), and these impacts can be attributed to the Federal action, detailed descriptions of the impacts must be provided in the NEPA document.

## 4.15 Financial Assistance Programs

Reclamation provides financial assistance through several different types of signed documents. These financial instruments are used to convey funds to other entities through: (1) cost-share programs such as Title 28, challenge grants, water recycling, and other partnership activities; (2) cost reimbursement for programs such as drought relief assistance; and (3) funding of activities such as FWCA reports.

Necessary environmental compliance actions should be considered before initiating actions requiring Federal approval or funding. Signing of financial assistance documents and payment of associated costs is contingent upon first completing appropriate environmental compliance actions and documentation.

Generally, studies and planning assistance activities are categorically excluded from NEPA compliance by the Department of the Interior and do not require completion of a CEC. In addition, if these activities are restricted to such actions as nondestructive data collection, monitoring, and nonmanipulative field studies, they may not require analysis under other environmental laws and regulations. However, cultural clearances and Section 404 permits may be required for monitoring or studies involving test pits or drill holes and, therefore, a CEC should be completed. In general, if the action being approved or funded is not expected to cause on-the-ground effects, completing a CEC is probably not necessary.

Under NEPA, an appropriate document must be prepared which describes and analyzes the environmental effects of a proposed

Federal action. Preparation of a CEC may be appropriate for most proposals for which financial assistance is proposed. However, proposals with unclear or potentially significant impacts will require preparation of an EA or an EIS. For these latter two documents, sufficient time and funds must be allowed for completion before the assistance document can be signed (i.e., the document which approves the proposed action and commits funds to implement that action).

In addition, NEPA compliance for projects of non-Federal partners on Reclamation lands, regardless of the funding source (cost share or otherwise), is also required. For example, NEPA compliance is required prior to construction of new facilities in a recreational area managed by a county for Reclamation, even if the county and/or other entities are paying the total cost.

It should be noted that non-Federal entities are not “responsible” for compliance with NEPA. NEPA compliance is Reclamation’s responsibility. However, due to policy, budget, and staffing limitations, Reclamation often requires that benefiting entities (applicants) provide the needed information and even, in some cases, the analysis necessary for the NEPA compliance documentation (40 CFR 1506.5(a)). In the case of interagency acquisitions, the appropriate Federal partner may be required to complete the NEPA analysis and documentation. This requirement should be specified in any agreement.

The cost of NEPA compliance may be included as a shared cost or as a direct cost to the applicant. The respective financial agreement should specify how these costs will be covered.

## 4.16 Inclusions/Exclusions

Inclusions and exclusions occur when land is being added to an existing Reclamation project area (inclusion) or when land is being removed from an existing Reclamation project area (exclusion). Inclusions and exclusions should be viewed as any other action undertaken by Reclamation and, as such, are to be reviewed pursuant to NEPA. There is usually some land-use change associated with these activities, and this change must be evaluated as part of the action in evaluating an inclusion or exclusion. In many cases, a CEC will not be the appropriate level of NEPA documentation. This is particularly true when the water service associated with an inclusion results in land use changes impacting the environment. In these cases, an EA, as a minimum, or an EIS (if warranted) should be prepared. In cases in which it can be established that Reclamation’s

action of approving inclusions/exclusions has no demonstrable effect on land use (and, thus, no environmental effects), a CEC may be an appropriate document.

## 4.17 Warren Act and Similar Actions

Warren Act contracts are generally agreements entered into to allow the sale of excess project water, or the storage or conveyance of nonproject water, in Reclamation facilities. These contracts are entered into at times when Reclamation has conveyance or storage capacity in its facilities. These contracts should be viewed pursuant to NEPA in the same manner as that explained for water transfers and inclusions/exclusions (sections 4.14 and 4.16). Briefly, Reclamation must determine the direct and indirect impacts of entering into a Warren Act contract and then complete the appropriate level of NEPA compliance. As with other actions associated with the use or transfer of water, care must be taken to clearly define Reclamation's action and those impacts that may result from the Federal action.

## 4.18 Water Conservation

Reclamation will appropriately comply with NEPA on all actions associated with Federal assistance to districts in conservation planning and implementation activities. Specific compliance actions will be commensurate with the level and type of assistance provided or the Federal action taken, as outlined below.

1. *Submittal and Review of Water Conservation Plans (WCPs).*—Districts are required under the Reclamation Reform Act to develop and submit WCPs to Reclamation. Reclamation will review each individual WCP submitted and provide comments and recommendations to the district on its identified goals and measures. These comments will be advisory in nature but will be substantive in identifying possible environmental impacts of measures proposed in the plan. Reclamation will include in those comments information on any possible future NEPA or ESA compliance that may be envisioned for site-specific implementation of plan elements. Reclamation will not approve plans but may publish notice of WCPs submitted. Because they are public documents, Reclamation will make available to any interested party, as requested, a copy of each submitted plan and/or Reclamation comments and recommendations.

2. *NEPA Compliance Associated with Conservation Planning Assistance.*—When Reclamation provides a district with assistance in the preparation of WCPs, Reclamation will comply appropriately with

NEPA on the Federal action taken. Technical assistance that can be considered general, day-to-day, and limited in scope will usually fall within an existing Departmental NEPA CE covering such routine informational technical assistance activities, and no formal documentation of such activity will be processed. However, indepth, site-specific assistance may not be covered by the CE.

Reclamation's advisory guidance for water management and conservation planning, although not incorporated into new regulations, will provide the basis upon which Reclamation will assist and encourage districts to develop and implement effective, environmentally sound WCPs and practices.

*3. NEPA Compliance Associated with Conservation Implementation Assistance.*—When Reclamation provides a district with assistance in the implementation of water conservation measures identified in a district's plan, Reclamation will again comply appropriately with NEPA on the Federal action taken prior to implementation of the measure. When Reclamation provides a district with financial assistance to implement or demonstrate a water conservation measure identified in a plan, appropriate NEPA compliance will be documented as a part of the financial assistance agreement. If Reclamation provides a district with technical assistance to implement or demonstrate a water conservation measure, Reclamation will address appropriate NEPA compliance as described above for conservation planning assistance, depending on whether such technical assistance is provided generally, or formally through agreement.

When Reclamation provides technical or financial assistance for implementing or demonstrating a water conservation measure, Reclamation will consider the interrelationship of all measures proposed in the district's WCP and provide recommendations on potential environmental impacts and mitigation strategies.

## 4.19 Applicant-Driven Actions

It is Departmental policy (516 DM 3.6) and normal Reclamation practice to require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as part of their applications for loans, grants, licenses, permits, and contracts. In practical terms, this means Reclamation EAs, and even EISs, will frequently be prepared by consulting firms working for, and paid by, the applicants. For such externally driven proposals, NEPA compliance questions commonly arise in three areas: (1) range of alternatives; (2) limitations on actions by the applicant; and (3) contractor selection requirements. As noted earlier, Reclamation remains fully responsible for the adequacy of NEPA compliance.



#### 4.19.1 Range of Alternatives

(40 CFR 1502.14, 516 DM 4.10.A.(2); also see CEQ's *Forty Most Asked Questions*, #2, and CEQ Guidance Memorandum issued August 10, 1983)

Frequently, the applicant's proposed action will be submitted to Reclamation for approval, and the Federal decision (action) may be to simply approve or disapprove. In such situations, Reclamation must determine what other alternatives should be considered in the NEPA document and whether these alternatives are "reasonable," given the purpose of the action.

In general, the referenced guidance is to include and consider reasonable alternatives in applicant-driven proposals in the same fashion that an internal Reclamation proposal would include and consider them. In CEQ's *Forty Most Asked Questions*, it is observed that

*Reasonable alternatives include those that are **practical or feasible** from the technical or economic standpoint and using common sense rather than simply **desirable** from the standpoint of the applicant.*

In later guidance (August 1983 guidance memorandum), CEQ concludes it is reasonable for the Federal agency to limit the range of alternatives to "those . . . which are considered feasible, given the applicant's stated goals." The agency should consider the "applicant's purposes and needs and the common sense realities of a given situation in the development of alternatives."

#### 4.19.2 Limitations on Actions by the Applicant

(40 CFR 1506.1, 516 DM 5.6; also see CEQ's *Forty Most Asked Questions*, #11)

The referenced guidance is clear on this subject. The applicant is held to the same standard as the Federal agency in taking action prior to completion of the NEPA process. That is, the applicant should not take any action prior to the ROD or FONSI that would have an adverse environmental impact or that would limit the choice of reasonable alternatives. The difficulty for the Federal agency lies in how to enforce this limitation when the applicant may be initiating the proposal with its own money and on its own property (i.e., there is no Federal authority to stop such private actions). CEQ advised the Federal agency to "notify the applicant that the agency will take

strong affirmative steps to ensure that the objectives and procedures of NEPA are fulfilled.” For example, the agency might advise an applicant that if it takes such action, the agency will not process its application. The Departmental Manual requires notification of the Assistant Secretary, the Solicitor, and OEPC in situations where an applicant is violating the limitations.

#### 4.19.3 Contractor Selection Requirements

*(40 CFR 1506.5, 516 DM 3.6; also see CEQ’s Forty Most Asked Questions, #16 and #17, and CEQ Guidance Memorandum issued August 10, 1983)*

The referenced guidance should be consulted for detailed information, especially the August 10, 1983, CEQ memorandum. In general, EAs may be prepared by applicants (or their consultants) without prior approval or involvement by the Federal agency in the selection of the consultant. Early coordination is encouraged. The Federal agency may adopt such EAs if they meet the agency’s requirements, including compliance with CEQ regulations.

When EISs are prepared by a third party, the referenced guidance should be carefully reviewed. In such cases, the lead or cooperating agency must **select** the contractor, even though the contractor is being paid by the applicant, not the Federal agency. Federal acquisition requirements do not apply, since the Federal agency incurs no obligations or costs under the contract, nor does the agency procure anything under the contract. Further, the consulting firm preparing the EIS must sign a disclosure statement stating that they have no financial or other interest in the outcome of the project.